

**Tuesday, February 28, 2012**

The Board met at its offices at 450 N Street, Sacramento, at 10:03 a.m., with Mr. Horton, Chairman, Ms. Steel, Vice Chairwoman and Ms. Yee present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

### **ANNOUNCEMENT OF CLOSED SESSION**

The Board recessed at 10:03 a.m. and reconvened immediately in closed session with Mr. Horton, Ms. Steel, Ms. Yee and Ms. Mandel present.

### **CLOSED SESSION**

The Board met to discuss pending litigation (Gov. Code § 11126(e)).

The Board recessed at 10:08 a.m. and reconvened immediately in open session with Mr. Horton, Ms. Steel, Ms. Yee and Ms. Mandel present.

The Board recessed at 11:09 a.m. and reconvened at 11:19 a.m. with Mr. Horton, Ms. Steel, Ms. Yee and Ms. Mandel present.

### **SALES AND USE TAX APPEALS HEARING**

Johnny Batista, 531628 (BH)

10-1-06 to 9-30-09, \$246,605.18 Tax, \$24,660.51 Negligence Penalty

For Petitioner: Johnny Batista, Taxpayer

For Sales and Use Tax Department: Scott Lambert, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether petitioner has established that the audited understatement is excessive.  
Whether petitioner was negligent.

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Ms. Mandel voting yes, Mr. Runner absent, the Board ordered that the petition be submitted for decision.

The Board recessed at 12:14 p.m. and reconvened at 1:35 p.m. with Mr. Horton, Ms. Steel, Ms. Yee and Ms. Mandel present.

### **PUBLIC COMMENT**

Speaker: William M. Connell, Military Veteran and owner of All American Surf Dog  
([Exhibit 2.6](#))

Exhibits to these minutes are incorporated by reference.

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**PUBLIC HEARINGS****Property Taxes – State Assesseees’ Presentations on Capitalization Rates and Other Factors Affecting Values**

Ken Thompson, Chief, State Assessed Properties Division, Property and Special Taxes Department, made introductory remarks regarding 1) the state assesseees’ presentation on capitalization rates and other factors and procedures affecting 2012/13 property values of California public utilities, railroads, and pipelines; and, 2) private railroad car assesseees’ presentations on factors and procedures affecting 2012/13 taxable values of private railroad cars.

Speaker: Peter W. Michaels, Law Offices of Peter Michaels

**LEGAL APPEALS MATTERS, CONSENT**

The Board deferred consideration of the following matter: *Hung Van Pham, 486918.*

With respect to the Legal Appeals Matters Consent Agenda, upon a single motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Ms. Mandel voting yes, Mr. Runner absent, the Board made the following orders:

**Ehab M. Elsonbati, 478553, 478559 (UT)**

2-15-99, \$4,537.50 Tax, \$453.75 Failure to File Penalties, \$453.75 Finality Penalties, \$1,139.98 Amnesty Interest Penalties

5-19-99, \$14,384.76 Tax, \$1,485.00 Failure to File Penalties, \$1,485.00 Finality Penalties, \$3,390.68 Amnesty Interest Penalties

Action: Redetermine as recommended by the Appeals Division.

**KM Western Investment Corp., 522747, 546402 (KH)**

10-21-05 to 12-31-06, \$60,973.45 Tax, \$6,097.35 Negligence Penalty

1-1-07 to 9-30-08, \$60,614.58 Tax, \$24,245.83 Penalty for knowingly failing to remit tax collected

Action: Redetermine as recommended by the Appeals Division.

**Jose Luis Medina, 394183, 440302 (GH)**

10-1-02 to 3-31-04, \$54,307.81 Tax, \$5,430.76 Negligence Penalty, \$644.45 Amnesty Double Negligence Penalty, \$547.74 Amnesty Interest Penalty

4-1-04 to 9-30-05, \$88,750.36 Tax, \$8,875.09 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

**Coliseum Steel Products, Inc., 522209 (CH)**

1-1-06 to 12-31-08, \$213,597.99 Tax

Action: Redetermine as recommended by the Appeals Division.

**Qaisara Malik, 509272 (KH)**

7-1-05 to 6-30-08, \$7,510.50 Tax

Action: Redetermine as recommended by the Appeals Division.

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HTL, Inc., 493837, 515740 (ET)

2-1-06 to 4-30-06, \$15,973.69 Tax, \$0.00 Negligence Penalty

5-1-06 to 12-31-06, \$45,361.41 Tax, \$4,536.15 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

Brian Niles Uslan, 488954 (KH)

1-1-05 to 1-23-06, \$25,210.33 Tax, \$2,756.00 Late Payment Penalties

Action: Redetermine as recommended by the Appeals Division.

Jason JW Kim and Andrew Kyu Kim, 593349 (ET)

August 29, 2011, \$5,201.66 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Uk Ro and Rosa Eunsook Ro, 594030 (ET)

September 8, 2011, \$602.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Will Y. Wong and Juliana K. Wong, 596311 (ET)

October 20, 2011, \$ 834.00 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Tripti Majumder, 595055 (ET)

September 27, 2011, \$310.89 Approximate Value

Action: Determined that staff properly seized the tobacco products.

Juana Maria Olmos, 496090 (AC)

4-1-06 to 3-31-09, \$12,450.33 Tax, \$1,297.29 Negligence Penalty

Action: Grant the petition for rehearing as recommended by the Appeals Division.

Juan B. Garibo, 513023 (AS)

10-1-02 to 6-30-07, \$37,112.16 Tax, \$18,556.11 Knowingly Operating Without a Permit Penalty

Action: Deny the petition for rehearing as recommended by the Appeals Division.

Hung Van Pham, 486918 (BH)

1-1-05 to 9-14-06, \$37,864.00 Tax, \$4,772.65 Negligence Penalty

Action: The Board took no action.

**CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT**

The Board deferred consideration of the following matter: John E. Frantz, 461562.

With respect to the Corporate Franchise and Personal Income Tax Matters Consent Agenda, upon a single motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Ms. Mandel voting yes, Mr. Runner absent, the Board made the following orders:

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John E. Frantz, 461562

1991, \$223,288.00 Claim for Refund

Action: The Board took no action.

Bonny Goselin, 550204

2004, \$3,299.00 Tax, \$824.75 Late Filing Penalty

Benjamin Killen, 554787

2007, \$1,887.00 Tax, \$471.75 Late Filing Penalty, \$471.75 Demand Penalty, \$113.00 Filing Enforcement Fee

Champion Wiseman, 523161

2007, \$1,550.00 Tax, \$387.50 Late Filing Penalty, \$387.50 Demand Penalty, \$119.00 Filing Enforcement Fee

Action: Sustain the action of the Franchise Tax Board and impose the following frivolous appeal penalties on each appeal: *Bonny Goselin, 550204*, \$1,500.00; *Benjamin Killen, 554787*, \$5,000.00; and, *Champion Wiseman, 523161*, \$750.00.

Thomas S. Hernandez, 538636

2005, \$2,652.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Teresa S. Lee, 571533

2008, \$1,038.00 Assessment

Action: Sustain the modified action of the Franchise Tax Board.

Robert A. Poll and Gail D. Poll, 523625

2000, \$1,520,083.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Danilo F. Quintana, 520065

2005, \$1,756.06 Assessment

Action: Sustain the action of the Franchise Tax Board as modified by its concessions on appeal.

Terry D. Ross and Mary J. Ross, 554433

1999, \$1,534.00 Tax, \$290.90 Post amnesty Penalty

Action: Sustain the action of the Franchise Tax Board.

### **SALES AND USE TAX MATTERS, REDETERMINATIONS, RELIEF OF PENALTY AND DENIALS OF CLAIMS FOR REFUND, CONSENT**

With respect to the Sales and Use Tax Matters, Redeterminations, Relief of Penalty and Denials of Claims for Refund, Consent Agenda, upon a single motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Ms. Mandel voting yes, Mr. Runner absent, the Board made the following orders:

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Microboards Technology, LLC, 572715 (OH)

7-1-01 to 6-30-09, \$156,042.63

Action: Approve the redetermination as recommended by staff.

Living Spaces Furniture, LLC, 559977 (AA)

1-1-07 to 12-31-09, \$1,029,344.94

Action: Approve the redetermination as recommended by staff.

James Lyle Anderson, 485900 (GH)

10-1-06 to 3-31-07, \$174,696.89

Action: Approve the redetermination as recommended by staff.

National City Commercial Capital Corporation, 469685 (OH)

1-1-04 to 12-31-06, \$301,964.80

Action: Approve the redetermination as recommended by staff.

PCS Leasing Co., L.P., 597059 (OH)

4-1-11 to 6-30-11, \$138,402.60

Action: Approve the relief of penalty as recommended by staff.

Bank of America National Assoc., 474781 (OH)

1-1-05 to 12-31-07, \$362,840.00

Action: Approve the denial of claim for refund as recommended by staff.

Scripps Health, 550597 (FH)

1-1-08 to 12-31-10, \$74,112.33

Action: Approve the denial of claim for refund as recommended by staff.

Key Information Systems, Inc., 528282 (AC)

1-1-06 to 12-31-06, \$60,985.06

Action: Approve the denial of claim for refund as recommended by staff.

3M Company, 504671 (OH)

4-1-06 to 12-31-09, \$398,813.00

Action: Approve the denial of claim for refund as recommended by staff.

Oberthur Technologies of America Corporation, 507406 (OH)

4-1-07 to 6-30-07, \$134,422.00

Action: Approve the denial of claim for refund as recommended by staff.

**SALES AND USE TAX MATTERS, CREDITS, CANCELLATIONS AND REFUNDS, CONSENT**

With respect to the Sales and Use Tax Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 87105 in *American Honda Finance Corp.*, 260528, Mr. Runner absent, the Board made the following orders:

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Cardinal Health 110, Inc., 518182 (OH)

10-1-99 to 3-31-06, \$5,865,726.16

Action: Approve the credit and cancellation as recommended by staff.

MTD America LTD, LLC, 597206 (OH)

10-1-09 to 12-31-09, \$153,928.01

Action: Approve the credit and cancellation as recommended by staff.

American Honda Finance Corp., 260528 (AS)

1-1-01 to 12-31-04, \$2,777,536.39

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 87105.

Bank of America National Assoc., 474781 (OH)

1-1-05 to 12-31-07, \$587,160.00

Action: Approve the refund as recommended by staff.

Scripps Health, 550597 (FH)

1-1-08 to 12-31-10, \$1,995,508.19

Action: Approve the refund as recommended by staff.

The Golden 1 Credit Union, 536968 (KH)

10-1-06 to 12-31-09, \$160,067.86

Action: Approve the refund as recommended by staff.

The Golden 1 Credit Union, 586110 (KH)

4-1-11 to 6-30-11, \$115,453.00

Action: Approve the refund as recommended by staff.

Red Bull North America, Inc., 523369 (AS)

10-1-06 to 9-30-10, \$2,380,296.43

Action: Approve the refund as recommended by staff.

Key Information Systems, Inc., 528282 (AC)

1-1-06 to 12-31-06, \$376,504.54

Action: Approve the refund as recommended by staff.

Lumileds Lighting U.S., LLC, 595383 (GH)

4-1-04 to 12-31-08, \$177,025.20

Action: Approve the refund as recommended by staff.

Wells Fargo Dealer Services, Inc., 578647 (EA)

4-1-11 to 6-30-11, \$462,432.00

Action: Approve the refund as recommended by staff.

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3M Company, 504671 (OH)

4-1-06 to 12-31-09, \$618,857.00

Action: Approve the refund as recommended by staff.

Northrop Grumman Systems Corp., 476959 (AS)

1-1-02 to 12-31-07, \$4,091,033.42

Action: Approve the refund as recommended by staff.

Modern Finance Company, 518682 (AC)

1-1-08 to 6-30-09, \$364,333.21

Action: Approve the refund as recommended by staff.

Challenge Financial Services, Inc., 486721 (EA)

1-1-08 to 3-31-10, \$270,898.07

Action: Approve the refund as recommended by staff.

Bowman Asphalt, Inc., 574502 (AR)

10-1-10 to 3-31-11, \$133,771.27

Action: Approve the refund as recommended by staff.

Medcal Sales, LLC, 577460 (EH)

4-1-08 to 3-31-11, \$127,417.47

Action: Approve the refund as recommended by staff.

Harley-Davidson Credit Corp., 556839 (OH)

1-1-10 to 6-30-10, \$551,739.00

Action: Approve the refund as recommended by staff.

Bankers Auto Acceptance Corp., 466585 (AA)

11-16-07 to 12-31-09, \$331,832.06

Action: Approve the refund as recommended by staff.

Southland Credit Union, 534186 (EA)

4-1-07 to 3-31-10, \$172,972.30

Action: Approve the refund as recommended by staff.

**SPECIAL TAXES MATTERS, CREDITS, CANCELLATIONS AND REFUNDS,  
CONSENT**

With respect to the Special Taxes Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Ms. Mandel voting yes, Mr. Runner absent, the Board made the following order:

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Chevron U.S.A., Inc., 448517, 597582 (MT)

10-1-05 to 9-30-08, \$195,836.83

Action: Approve the refund as recommended by staff.

**LEGAL APPEALS MATTERS, ADJUDICATORY**

Dansig, Inc., 493691 (EA)

1-1-06 to 12-31-08, \$82,385.70 Tax, \$12,131.64 Negligence Penalty

Considered by the Board: July 27, 2011

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Ms. Mandel voting yes, Mr. Runner absent, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Gurmail Singh, 487083 (AR)

10-1-06 to 12-31-07, \$97,669.31 Tax, \$781.00 Late Payment of Return Penalty, \$9,976.80

Failure to File Returns Penalty, \$10,802.20 Finality Penalty

Considered by the Board: August 23, 2011

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Ms. Mandel voting yes, Mr. Runner absent, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Eritech International, Inc., 469541 (AC)

7-1-04 to 3-31-08, \$25,081.66 Tax, \$2,508.18 Negligence Penalty

Considered by the Board: March 23, 2011

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Ms. Mandel voting yes, Mr. Runner absent, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

**CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, ADJUDICATORY**

Ray E. O'Bier, 522148

2006, \$4,204.00 Tax

Considered by the Board: August 23, 2011

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Ms. Mandel voting yes, Mr. Runner absent, the Board adopted a decision sustaining the action of the Franchise Tax Board.



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**SALES AND USE TAX MATTERS, DENIALS OF CLAIMS FOR REFUND,  
ADJUDICATORY**

Federal Express Corporation, 196286 (OH)

1-1-97 to 12-31-00, \$135,998.31

Considered by the Board: October 23, 2002

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Ms. Mandel voting yes, Mr. Runner absent, the Board approved the denial of claim for refund as recommended by staff.

Oracle Corporation, 316909 (BH)

4-1-02 to 6-30-02, \$136,067.32

Considered by the Board: July 29, 2005

Contribution Disclosures pursuant to Government Code section 15626: No contribution disclosure forms were filed. The Members noted that their records disclosed no contributions from this taxpayer, his agent or participants.

Action: Upon motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Ms. Mandel voting yes, Mr. Runner absent, the Board approved the denial of claim for refund as recommended by staff.

Solaicx, 523864 (GH)

7-1-05 to 6-30-08, \$160,000.00

Considered by the Board: February 11, 2010

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board approved the denial of claim for refund as recommended by staff.

**SALES AND USE TAX MATTERS, CREDITS, CANCELLATIONS AND REFUNDS,  
ADJUDICATORY**

Federal Express Corporation, 196286 (OH)

1-1-97 to 12-31-00, \$2,571,854.26

Considered by the Board: Presented for Separate Discussion

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Ms. Mandel voting yes, Mr. Runner absent, the Board approved the refund as recommended by staff.

Citigroup, Inc. and Subsidiaries and Affiliates, 446954 (OH)

1-1-06 to 6-30-08, \$1,943,047.25

Considered by the Board: Presented for Separate Discussion

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

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Action: Upon motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Ms. Mandel voting yes, Mr. Runner absent, the Board approved the refund as recommended by staff.

## **TAX PROGRAM NONAPPEARANCE MATTERS NOT SUBJECT TO CONTRIBUTION DISCLOSURE STATUTE**

### **PROPERTY TAX MATTERS**

#### **Audits**

##### **Bicent (California) Malburg, LLC (1154)**

2010, \$42,100,000.00 Escaped Assessment, \$6,315,000.00 In-lieu Interest

2011, \$7,200,000.00 Excessive Assessment, \$432,000.00 In-lieu Interest

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel and Ms. Yee voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, Mr. Runner absent, the Board adopted the audit escaped and excessive assessment, plus in-lieu interest, as recommended by staff.

##### **Cricket Communications, Inc. (2762)**

2007, \$6,500,000.00 Excessive Assessment, \$0.00 Penalties, \$0.00 In-lieu Interest

2008, \$5,800,000.00 Excessive Assessment, \$0.00 Penalties, \$0.00 In-lieu Interest

2009, \$8,500,000.00 Escaped Assessment, \$850,000.00 Penalties, \$2,040,000.00 In-lieu Interest

2010, \$21,900,000.00 Escaped Assessment, \$2,190,000.00 Penalties, \$3,285,000.00 In-lieu Interest

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel and Ms. Yee voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, Mr. Runner absent, the Board adopted the audit escaped and excessive assessment, plus penalties and in-lieu interest, as recommended by staff.

##### **T-Netix Telecommunications Services, Inc. (8084)**

2008, \$171,000.00 Escaped Assessment, \$17,100.00 Penalties, \$56,430.00 In-lieu Interest

2009, \$143,000.00 Excessive Assessment, \$0.00 Penalties, \$34,320.00 In-lieu Interest

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel and Ms. Yee voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, Mr. Runner absent, the Board adopted the audit escaped and excessive assessment, plus penalties and in-lieu interest, as recommended by staff.

### **Unitary Escaped Assessments**

##### **Bestel USA, Inc. (8133)**

2011, \$73,900.00 Escaped Assessment, \$7,390.00 Penalty

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel and Ms. Yee voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, Mr. Runner absent, the Board adopted the unitary escaped assessment, plus penalties, as recommended by staff.

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**Infotelecom, LLC (8134)**

2011, \$54,100.00 Escaped Assessment, \$5,410.00 Penalty

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel and Ms. Yee voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, Mr. Runner absent, the Board adopted the unitary escaped assessment, plus penalties, as recommended by staff.

**Broadvox-CLEC, LLC (8135)**

2011, \$309,000.00 Escaped Assessment, \$30,900.00 Penalty

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel and Ms. Yee voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, Mr. Runner absent, the Board adopted the unitary escaped assessment, plus penalties, as recommended by staff.

**OFFER IN COMPROMISE RECOMMENDATIONS**

Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Ms. Mandel voting yes, Mr. Runner absent, the Board approved the Offer in Compromise recommendations of *Stewart Allen Cohen*; *David Alan Ross*; and, *Karen Elizabeth Sexton*; as recommended by staff.

**FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD FEBRUARY 28, 2012**

Daniel W. Shulte, 475423 (KH)

Robert Wayne Kral, 475458 (KH)

4-1-02 to 6-30-05, \$197,948.17 Tax, \$31,306.28 Negligence Penalty, \$1,246.60 Late-Payment Penalty, \$31,306.30 Finality Penalty, \$6,222.81 Amnesty Double-Negligence Penalty, \$190.78 Amnesty Double-Finality Penalty, \$162.16 Amnesty Interest Penalty

For Petitioners: Appearance Waived

For Sales and Use Tax Department: Cary Huxsoll, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether petitioner is personally liable pursuant to Revenue and Taxation Code section 6829 for the unpaid liabilities of Modern Stainless & Design, Inc. for the period April 1, 2002, through June 30, 2005.

Whether petitioner's liability as a reasonable person for Modern's unpaid tax liability was discharged in his personal bankruptcy.

Whether the penalties imposed against Modern and included in the assessment to petitioner should be relieved.

Whether the amnesty penalties imposed against Modern and included in the assessment to petitioner should be relieved.

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Ms. Mandel voting yes, Mr. Runner absent, the Board ordered that the petition be redetermined as recommended by the Appeals Division. The Board directed staff to inform the taxpayers about the Offer in Compromise Program.

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Johnny Batista, 531628 (BH)

Final Action: Upon motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Ms. Mandel voting yes, Mr. Runner absent, the Board ordered that sales be computed based on a graduating scale starting at \$2,600.00 for 2006 to \$3,055.00 for 2009, that 30 days of audited sales be deleted because the business was closed, and that the negligence penalty be removed.

**ANNOUNCEMENT OF CLOSED SESSION**

The Board recessed at 2:11 p.m. and reconvened immediately in closed session with Mr. Horton, Ms. Steel, Ms. Yee and Ms. Mandel present.

**CLOSED SESSION**

The Board met to discuss pending litigation (Gov. Code § 11126(e)), settlements (Rev. & Tax. Code §§ 6901, 7093.5, 30459.1 and 50156.11) and personnel matters (Gov. Code § 11126(a)).

The Board recessed at 2:16 p.m. and reconvened immediately in open session with Mr. Horton, Ms. Steel, Ms. Yee and Ms. Mandel present.

The Board adjourned at 2:16 p.m.

*The foregoing minutes are adopted by the Board on May 31, 2012.*

Note: The following matters were removed from the calendar prior to the meeting: *Michael John Klemp, 568733*; and, *Tae G. Mok and Gyum S. Mok, 472910*.

**Wednesday, February 29, 2012**

The Board met at its offices at 450 N Street, Sacramento, at 9:33 a.m., with Mr. Horton, Chairman, Ms. Steel, Vice Chairwoman, Ms. Yee and Mr. Runner present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

### **SALES AND USE TAX APPEALS HEARINGS**

Vincent Frere, 475376 (KH)

4-1-02 to 3-31-05, \$193,685.17 Tax, \$31,306.28 Negligence Penalty, \$820.30 Late-Payment Penalty, \$31,306.30 Finality Penalty, \$6,222.81 Amnesty Double Negligence Penalty, \$190.78 Amnesty Double Finality Penalty, \$162.16 Amnesty Interest Penalty

For Petitioner:

Vincent Frere, Taxpayer

John S. Bartlett, Attorney

For Sales and Use Tax Department:

Cary Huxsoll, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether petitioner is personally liable pursuant to Revenue and Taxation Code section 6829 for the unpaid liabilities of Modern Stainless & Design, Inc. for the periods April 1, 2002, through March 31, 2005.

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Ms. Mandel voting yes, Mr. Runner absent, the Board ordered that the petition be submitted for decision.

Eloy Vargas Tejada, 506556 (BH)

4-1-06 to 3-31-09, \$15,555.04 Tax, \$2,616.96 Negligence Penalty, \$2,560.60 Finality Penalty

For Taxpayer:

Eloy Vargas Tejada, Taxpayer

Mario West, Representative

For Sales and Use Tax Department:

Scott Lambert, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether adjustments are warranted to the amount of unreported taxable sales.  
Whether taxpayer was negligent.

Whether relief of the finality penalty is warranted.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Ms. Mandel voting yes, Mr. Runner absent, the Board ordered that the matter be submitted for decision.

### **ADMINISTRATIVE SESSION**

#### **ADMINISTRATIVE MATTERS, CONSENT**

With respect to the Administrative Matters, Consent Agenda, upon a single motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Ms. Mandel voting yes, Mr. Runner absent, the Board made the following orders:

Wednesday, February 29, 2012

Action: Adopt the following resolutions, extending its sincere and grateful appreciation to the retirees for their dedicated service to the State Board of Equalization and to the State of California, their congratulations on each retiree's well-earned retirement, and best wishes to them and their families for continued success, happiness and good health in the years to come ([Exhibit 2.7](#)).

Ruth E. Betron, Associate Tax Auditor, Sales and Use Tax Department, New York District Office  
Allen D. Brown, Associate Tax Auditor, Sales and Use Tax Department, Redding District Office  
Marilyn Hardy, Training Officer I, Training and Employee Development Section, Human Resources Division, Headquarters  
Sharon King, Associate Governmental Program Analyst, Tax and Fee Case Management Section, Board Proceedings Division, Headquarters  
Sue Teaman, Business Taxes Specialist I, Van Nuys District Office  
Kenneth W. Topper, Chief, Acquisitions Branch, Administration Division, Headquarters

Action: Approve the Board Meeting Minutes of December 14-15, 2011.

Action: Approve the proposed new Audit Manual Chapter 14, *Appeals Procedures* ([Exhibit 2.8](#)).

With respect to the Administrative Matters, Consent Agenda, upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Ms. Mandel voting yes, Mr. Runner absent, the Board made the following order:

Action: Approve the 2012/13 excise tax rate setting (fuel tax swap) as recommended by staff ([Exhibit 2.9](#)).

Exhibits to these minutes are incorporated by reference.

## **ADOPTION OF BOARD COMMITTEE REPORTS AND APPROVAL OF COMMITTEE ACTIONS**

### **Business Taxes Committee**

Action: Upon motion of Ms. Steel, seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Ms. Mandel voting yes, Mr. Runner absent, the Board approved the Business Taxes Committee report and the actions therein ([Exhibit 2.10](#))

### **Customer Services and Administrative Efficiency Committee**

Action: Upon motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Ms. Mandel voting yes, Mr. Runner absent, the Board approved the Customer Services and Administrative Efficiency Committee report and the actions therein ([Exhibit 2.11](#)).

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## **OTHER ADMINISTRATIVE MATTERS**

### **Executive Director's Report**

Eric Steen, CROS Project Director, provided a report regarding progress on the CROS project to replace BOE's two current tax legacy technology systems.

Todd Gilman, Taxpayer Rights Advocate, Taxpayers' Rights Advocate Office, presented the Annual Report highlighting Taxpayers' Rights Advocate Office accomplishments, involvement in projects, current issues, and examples of services provided ([Exhibit 2.12](#)).

### **Administration Deputy Director's Report**

Liz Houser, Deputy Director, Administration Department, provided an update on the 450 N Street building.

Speakers:       Jared Yocom, Tax Technician III, Local Revenue Allocation Unit/Local and District Compliance Team, Board of Equalization, representing SEIU Local 1000  
Angela Verbaere, Chief of Building and Property Management Branch, Department of General Service  
Jim Derby, Acting Deputy Director, Real Estate Services Division, Department of General Services  
Nik Karlsson, Acting Chief of Project Management Branch, Department of General Services

Mr. Horton requested that a meeting be set with the leadership of DGS on how to best address the exposure to the State and taxpayers of California.

Liz Houser, Deputy Director, Administration Department, provided an update on the new San Diego facility ([Exhibit 2.13](#)).

Liz Houser, Deputy Director, Administration Department, provided information on the Governor's 2012/13 Budget and the budget impact of BOE proposals from prior fiscal years ([Exhibit 2.14](#)).

### **Technology Deputy Director's Report**

Brenda Fleming, Chief Information Officer, Technology Services Department, and Amy Tong, Technology Officer, Technology Services Department, provided an update on modernization projects to improve online access for customers and administrative efficiencies for employees ([Exhibit 2.15](#)).

Mr. Horton directed staff to prepare a presentation on the impact of the changing technology on criminal tax evasion.

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**External Affairs Deputy Director's Report**

Jaime Garza, Deputy Director, External Affairs Department, provided an update on new developments in internal and external communication strategies ([Exhibit 2.16](#)).

**FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD  
FEBRUARY 29, 2012**

Vincent Frere, 475376 (KH)

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Mr. Horton, Ms. Yee and Ms. Mandel voting yes, Ms. Steel voting no, Mr. Runner absent, the Board ordered that the petition be redetermined as recommended by the Appeals Division. The Board directed staff to inform the taxpayer about the Offer in Compromise Program.

Richard L. Garrett, 467929 (BH)

7-1-04 to 6-30-07, \$228,041.11 Tax, \$22,804.14 Negligence Penalty, \$22,779.03 Finality Penalty

For Taxpayer: Appearance Waived

For Sales and Use Tax Department: Scott Claremon, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether an adjustment is warranted for tax-paid purchases of fuel resold with vehicles.

Whether taxpayer has shown that the amount of losses related to bad debts and repossessions of vehicles should be increased.

Whether taxpayer was negligent.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Ms. Mandel voting yes, Mr. Runner absent, the Board ordered that no adjustment be made in the administrative protest as recommended by the Appeals Division. The Board directed staff to inform the taxpayer about the Offer in Compromise Program.

Sweetheart Cabinet Makers, Inc., 387045 (JH)

11-19-04 to 6-30-06, \$87,441.28 Tax, \$0.00 Penalty

For Petitioner: Appearance Waived

For Sales and Use Tax Department: Scott Lambert, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether adjustments are warranted to the amount of unreported sales.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Ms. Mandel voting yes, Mr. Runner absent, the Board ordered that the petition be redetermined as recommended by the Appeals Division. The Board directed staff to inform the taxpayer about the Offer in Compromise Program.



Wednesday, February 29, 2012

Eloy Vargas Tejada, 506556 (BH)

Final Action: Upon motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee and Ms. Mandel voting yes, Mr. Runner absent, the Board ordered that the average daily sales be reduced to \$409 per day, otherwise that no further adjustments be made in the administrative protest as recommended by the Appeals Division.

The Board adjourned at 12:12 p.m.

*The foregoing minutes are adopted by the Board on May 31, 2012.*

Note: The following matters were removed from the calendar prior to the meeting: *Stockton Railcar Repair, Inc., 493475 (KH)*; and, *Legislative Committee Report*.